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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

In the Matter of the Suspension)
or Revocation of the License of)

JAMES J. LAVALLA, D.D.S.)

To Practice Dentistry in the)
State of New Jersey)

Administrative Action

DECISION AND ORDER ON
PETITION FOR REINSTATEMENT

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon the filing of a Petition for Reinstatement of License to Practice Dentistry on April 23, 1993 by Robert W. Savage, Esq. on behalf of James J. Lavalla, D.D.S. Said Petition was filed in accordance with the Board's Decision and Final Order entered on February 5, 1992, which revoked the license of the respondent to practice dentistry in the State of New Jersey and further provided that the Board would not entertain a petition for reinstatement prior to the lapse of one year from the date of the Order. (A copy of the February 5, 1992 Decision and Final Order is attached hereto and incorporated in the within Order by reference.)

In support of his Petition for Reinstatement Dr. Lavalla provided the Board with documentary evidence that he sold his dental practice in Marlton, New Jersey in accordance with the Board's prior Order. He also provided satisfactory certification of successful completion of the mini-residency entitled "The Proper Prescribing of Controlled Dangerous Substances" provided

by Dr. William Vilensky. Reports were provided from Frederick Rotgers, Psy.D. of the NJDA Chemical Dependency Program in regard to an evaluation dated February 24, 1992 and in regard to Dr. Lavalla's participation in a program of urine-monitoring under the auspices of the NJDA Chemical Dependency Program dated March 22, 1993. Dr. Lavalla's treating therapist, Raymond Newstadt, M.S., New Start Associates, provided a report dated April 12, 1993, concerning frequency and progress of therapy. In accordance with the Board's prior order Dr. Lavalla also submitted to a psychological evaluation conducted by Frank J. Dyer, Ph.D., whose written report dated May 22, 1993, also was submitted to the Board. Finally, Dr. Lavalla submitted to the Board attendance sheets concerning attendance at AA meetings.

The Board's Order of February 5, 1992, also assessed a civil penalty in the amount of \$5,000.00 and costs to the State for the proceedings which were calculated at \$5,921.23. The civil penalty was due 60 days after the filing date of the Order, and the costs were due no later than 30 days after receipt of an affidavit from the Board's Executive Director concerning the amount of costs. That affidavit was provided to Dr. Lavalla and his counsel by letter dated February 13, 1992. Although the Board subsequently agreed to permit Dr. Lavalla to make such payments on an installment basis over the course of 12 months, no payment of the stated amounts was received by the Board until receipt of a letter from Mr. Savage dated May 19, 1993, on behalf of Dr. Lavalla which enclosed a check in the amount of \$1,000.00

and a proposal to pay the balance by making monthly payments in the amount of \$150.00 for 12 months to be followed by monthly payments of \$300.00 until the fine, costs and interest charges were paid in full.

A hearing on the Petition for Reinstatement was held before the Board on June 2, 1993, at which time Dr. Lavalla personally appeared with his counsel, Robert W. Savage, Esq. Board members Stephen Barbell, D.D.S., Marvin Gross, D.D.S., and Theresa Brisbin, R.D.H. who previously recused themselves from the proceedings concerning Dr. Lavalla, excused themselves from this proceeding also and did not remain in the hearing room.

As a preliminary matter, the Board agreed to include all of the documents submitted by Dr. Lavalla in support of his petition for reinstatement in the record and also determined to include by reference the record of the Board's prior proceedings concerning Dr. Lavalla as well as the written report of Dr. Dyer dated May 22, 1993.

Dr. Lavalla presented two witnesses to the Board to testify in his behalf. The first witness was Dr. Frederick Rotgers of the NJDA Chemical Dependency Program. The Program had been providing weekly urine monitoring for Dr. Lavalla since May 1992. The Program, through Dr. Rotgers, also was aware that Dr. Lavalla was in therapy with Mr. Newstadt and generally kept track of Dr. Lavalla's participation in AA/NA support groups. It was Dr. Rotgers' testimony that for the period May 1992 to December 1992 Dr. Lavalla could be characterized as continuing in denial of his

substance abuse problem. Apparently, he initially was reluctant to acknowledge a substance abuse problem and complied with the Program's recommendations but "begrudgingly". Dr. Rotgers stated that respondent was generally resistant to the Program's requirements including an objection to the volunteer assigned to Dr. Lavalla by the Program. Dr. Rotgers did not feel that Dr. Lavalla was attending sufficient numbers of AA/NA support groups. However, he advised the Board that there had been a substantial change in Dr. Lavalla's attitude since January 1993. This last six month period had been characterized by greater participation in the Program, his denial of a substance abuse problem had diminished, and his compliance with requirements appeared more genuinely motivated. Dr. Rotgers advised the Board that in his view Dr. Lavalla could practice dentistry so long as he had in place a comprehensive monitoring program as required by the Board in such cases.

Dennis J. McHenry, D.D.S. also testified in Dr. Lavalla's behalf. Dr. McHenry is a New Jersey licensed dentist practicing in Cherry Hill, New Jersey, and he is a volunteer with the NJDA Chemical Dependency Program assigned to monitor Dr. Lavalla. In that capacity he provides urine testing in accordance with the Program protocol and generally acts as a support resource person for Dr. Lavalla. Dr. McHenry also characterized Dr. Lavalla's participation in the Program during the first six months as begrudgingly compliant. During the last six months, however, he perceived an improved attitude wherein Dr. Lavalla admitted a

drug/alcohol problem, and there appeared to be a breakdown of his previous denial of such a problem. Dr. McHenry was very candid with the Board and stated that during the period May to December, 1992, he would not have had very much positive information to provide in regard to Dr. Lavalla. Dr. Lavalla was resistant to suggestions for change and resistant to increased frequency of attendance at the support groups. Since January 1993 their relationship improved substantially, and Dr. McHenry saw a great deal of improvement in Dr. Lavalla's attitude toward the monitoring program requirements.

Finally, Dr. Lavalla testified before the Board. He stated that he now takes responsibility for his prior actions and is dedicated to the monitoring program. He advised the Board that he started NA group attendance in July 1992 but did not feel that he fit in with the individuals in that group. He began attending the professional doctors group in December 1992 but admitted that it was advisable for him to attend more meetings. He stated that he now attends one meeting per week.

Dr. Frank Dyer states in his psychological evaluation of Dr. Lavalla dated May 22, 1993, that he is presently in a very early stage of the recovery process and that he is in need of continuing psychotherapy to address his personality problems as well as his addiction. He states that Dr. Lavalla presents significant personality problems including faulty impulse control and overuse of denial to cope with problems. Dr. Dyer did not make any specific recommendation concerning whether or not Dr.

Lavalla's license should be reinstated, but he recommended substantial and comprehensive restrictions on his license if it was reinstated. These recommendations included a restriction that Dr. Lavalla work only for another licensed dentist who would need to be advised of his chronic drug problem and who would agree to take responsibility for supervising Dr. Lavalla's conduct on the job. Dr. Dyer pointed out that during his consultation with Raymond Newstadt, Dr. Lavalla's treating therapist, the stress associated with Dr. Lavalla's professional work as a dentist was cited as a factor that has the potential to precipitate a relapse into drug abuse.

It appears to the Board that Dr. Lavalla is, in fact, in the early stages of the recovery process according to all of the professionals as well as Dr. McHenry, his volunteer sponsor. All of the information provided to the Board indicates that Dr. Lavalla has come to grips with his substance abuse problem, in a serious and genuine way, only within the last six months. While the Board recognizes the efforts that Dr. Lavalla has made in the last year, but most especially in the last six months, the Board believes that a full year of dedicated compliance with monitoring requirements is necessary before it is appropriate for the Board to consider reinstatement of his license to practice dentistry.

In view of the very serious nature of the charges originally brought against Dr. Lavalla and the Board's findings of fact and conclusions of law as specifically set forth in its Order of February 5, 1992, as well as the fact that Dr. Lavalla is a

repeat offender in this regard, the Board cannot permit any sympathy it may have for Dr. Lavalla's current circumstances to stand in the way of the Board's primary responsibility to assure the public that when Dr. Lavalla's license to practice dentistry in this State is reinstated, that he has in fact demonstrated that he is fit and competent to practice. It was and remains the intention of the Board that Dr. Lavalla demonstrate a full year of dedicated compliance with monitoring requirements.

In this regard the Board expects to see continuing weekly random urine monitoring, continuing bi-weekly psychotherapy, attendance at AA/NA support groups at least three to four times per week, and full compliance with any further recommendations made by the NJDA Chemical Dependency Program or his treating therapist.

Accordingly, in consideration of the entire record concerning these proceedings and for good cause shown,


IT IS ON THIS 28th DAY OF June, 1993,
ORDERED THAT:

1. The respondent's petition for reinstatement of license to practice dentistry is hereby denied.

2. The respondent shall be permitted to renew his application for reinstatement in six (6) months from the date of the hearing on the instant application.

3. Immediately prior to renewal of such application for reinstatement, respondent shall submit to a summary re-assessment

by Frank Dyer, Ph.D. upon referral by the Board of Dentistry.



JEROME HOROWITZ, D.D.S.
PRESIDENT
STATE BOARD OF DENTISTRY